COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED
FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of Case.

Writ Petition No. 5324 (M/S) of 2001

Kirpal Singh(deceased) and others.

Versus

Prescribed Authority/Addl. District Magistrate
(Vitt Evam Rajasva), Nainital and others.

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.)

Date: 23-5-2006
Initials of Judge

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/S) No. 5324 of 2001
Old Civil Misc. Writ Petition No. 41113 of 1993

1. Kripal Singh (Deceased)
   1/1 Gurbaj Singh S/o Kripal Singh.
   1/2 Gurvinder Singh S/o Kripal Singh.
   1/3 Smt. Surjeet Kaur W/o Kripal Singh.
2. Gur Bachan Singh,
3. Garnail Singh S/o Kripal Singh (Deceased)
   3/1 Smt. Surjeet Kaur.
   3/2 Gurbaj Singh
   3/2 Gurbinder Singh
   Both sons of Kripal Singh.
4. Hakim Singh S/o Godha Ram (Deceased)
   4/1 Satpal Singh S/o Hakim Singh.
   4/2 Gurbaj Singh.
   4/3 Gurvinder Singh
   4/4 Gurbachan Singh.
   All the petitioners are R/o Vill: Khanpur
   Tehsil Gadarpur, District- Nainital.

… ***Petitioners.***

Versus

1. Prescribed Authority/Addl. District Magistrate
   (Vitt Evam Rajasva), Nainital.
2. Addl. Commissioner (Administration) Kumaon
   Mandal, Nainital.
3. State of Uttar Pradesh (now State of Uttaranchal).

… **Respondents.**

Sri Vijay Bhatt, learned counsel for the appellants.
Sri Nand Prasad, Learned Standing Counsel for the respondents-State.

Date: May 23, 2006.

(Hon'ble B.S. Verma, J.)

By means of this writ petition, the petitioners have prayed for quashing the impugned order dated 27.10.1993 and 26-5-1993, passed by the respondent no.2 (Annexure Nos. 14 and 13 respectively) and the order dated 30-1-1993 passed by the respondent no.1 (Annexure No. 12) with a direction to the respondents not to interfere with the ownership and possession of the petitioners over their respective Khatas.

At the outset, it may be mentioned that petitioner No.4 Hakim Singh, was the father of petitioner nos. 1 and 2. Jarnail Singh, petitioner no. 3 Jarnail Singh was son of petitioner no.1 and grand-son of original tenure holder Hakim Singh. During the pendency of the writ petition, Hakim Singh, Kripal Singh and Jarnail Singh had died, they have been substituted by their legal heirs in this writ petition.

Relevant facts as emerging from the record are that initially proceedings for declaring the land in possession of land-holder Hakim Singh were initiated under the provisions of U.P. Imposition of Ceiling on Land Holdings Act, 1960 ***(for short the Act)*** and the Competent Authority vide his order dated 30.10.1991 declared 5.323 Hectare irrigated land as surplus vacant land in Ceiling Case No. 51/2 of 1992-93. In the course of proceedings, two major sons and one grand-son of the original tenure holder Hakim Singh filed separate objections before the Competent Authority alleging that all of them are separate tenure holders and their land had wrongly been combined with that of Hakim Singh, and they also appeared in the witness box in support of their respective contentions, but Competent Authority did not find favour with the objectors and passed the aforesaid order. Aggrieved by the judgment and order dated 30-10-1991, Hakim Singh as well as his two sons and grand-son went up in appeal before the Additional Commissioner which was registered as Ceiling Appeal No. 18/21 of 1991-92. The order dated 13-10-1992 passed by the Additional Commissioner on the appraisal of entire evidence on record had held that that appellants were all major and the land acquired by them could not have been included in the share of Hakim Singh. The appellate court accordingly allowed the appeal and set aside the impugned order dated 30-10-1991. The appellate court had recorded a clear-cut finding at page no.6 of his order that since appellant Kripal Singh Gurbachan Singh Jarnail Singh had purchased land by separate sale deed during the course of their attaining the age of majority and their names had been

entered in the revenue records. The case was remanded to the court below to hear the parties by serving separate notice under Section 10(2) of the Act and after affording opportunity of hearing and the case be decided on merits afresh.

After remand of the case, the matter was heard afresh by the Competent Authority who after considering the material on record confirmed the earlier order dated 30-10-1991 and the objections filed by Kripal Singh, Gurbachan Singh and Jarnail Singh were rejected. It was held that they were joint tenure holders. From a bare perusal of the impugned order dated 30-1-1993 goes to show that the Competent Authority had not issued any notice under Section 10(2) of the Act to each of the appellants as directed by the Appellate Court and an objection to this effect was raised by the petitioners before the competent authority.

Aggrieved by the order, dated 30-1-1993, the objectors-petitioners filed appeal bearing Ceiling Appeal No. 12/9 of 1992-93 before the Additional Commissioner, which too was dismissed vide judgment and order dated 26-5-1993. Then the petitioners preferred a review petition before the Additional Commissioner but even in the review application, the authority concerned did not find favour with the objectors and the review application was rejected vide order dated 27-10-1993.

Salient features of the objection filed by Sri Hakim Singh before the Competent Authority are that no notice under Section 10(2) of the Act was given to him and the notice was based on wrong facts; that the holdings held separately by his two major sons Kripal Singh, aged about 46 years and Gurbachan Singh aged about 44 years and grand-son Jarnail Singh aged about 24 years were wrongly clubbed in the holding of Hakim Singh against the law. He also mentioned the details of land purchased by his eldest son Kripal Singh through sale deed dated 12-6-1978 whereby 17-16 Bigha land was purchased by Kripal Singh besides another land measuring 56 Bigha 2 Biswa in the year 1970. Regarding his

younger son Gurbachan Singh, he stated that he purchased 35 Bigha 7 Biswa land in the year 1978 in addition to 11 Bigha 16 Biswa and 21 Bigha 16 Biswa land purchased through other sale deeds in the year 1978. He also alleged that his grand son Jarnail Singh acquired 24 Bigha land by way of will dated 6-5-1985 besides 15 Bigha 15 Biswa 10 Biswansi land purchased through sale-deed dated 2.2.79. It may be noted that at the time of execution of will in favour of Jarnail Singh, he had attained majority as will be seen in the later part of the judgment. However, on 2-2-1979, if it is presumed that Jarnail Singh, was a minor, then the property of a minor for the purpose of Ceiling Act and as per provisions of the Zamindari Abolition Act for the purpose of Section 154 would be clubbed with the property of the parents, because under both the Acts, minor includes in the family of his or her parents. For ready reference, explanation given in the foot of Section reads as “For the purposes of this section, the expression ‘family’ shall mean the transferee, his or her wife or husband (as the case may be) and minor children, and where the transferee is a minor also his or her parents. Kripal Singh, Gurbachan Singh and Jarnail Singh have also filed separate objections on the same footing as had been taken by Hakim Singh. There appears no need to go into the details of the objections filed by them. It may be mentioned here that all the four tenure holders, Hakim Singh, Kripal Singh, Gurbachan Singh and Jarnail Singh appeared in the witness box before the Competent Authority and all of them except Hakim Singh gave their statements on 9-7-1991. Hakim Singh was examined before the trial court on 17-7-1991. This evidence by the petitioners was given in the initial proceedings before the Competent Authority. As mentioned earlier, the Competent Authority did not find favour with the objections raised by the sons and grand-son of Hakim Singh and passed the order dated 30-10-1991. After remand of the case,Mukand Rai Gram Pradhan and Patwari Pradeep Kumar were examined before the Competent Authority. Mukand Rai has stated on 29-12-1992 that the petitioners are separate tenure holders and they are living

separately. In his cross-examination he clearly denied that there was any ban on the purchase of land belonging to Bengalis at the relevant time, when the sale deeds in question were executed. Patwari Pradeep Kumar on 8-1-1993 has deposed that all the names of all the four petitioners have been recorded in the revenue records as independent landholders.

The learned Additional Commissioner in Ceiling Appeal No. 12/9 dated 1992-93, at page no.2 of the judgment passed by him had made reference of all the sale-deeds and purchase of land separately by the land holders/objectors. However, the objections filed by the petitioners were rejected on the arguments of the learned counsel for the State that the objectors must have not attained majority at the time of execution of sale deeds in their favour and they could not have independent source of income. The only ground on which the appellate court dismissed the appeal is that the appellants could not file cogent evidence that they were major at the time of purchase of land by them.

I have heard learned counsel for the petitioners as well as learned Standing Counsel for the respondents-State and perused the material on record.

It is not disputed on behalf of the State that the petitioners are recorded tenure-holder in the revenue records. It is also not disputed that the land held by the petitioners was purchased and acquired by them through registered sale-deeds. The only fact, which has been disputed by the learned Standing Counsel for State is that the courts below have rightly come to the conclusion that the sons of original tenure holder Sri Hakim Singh were minor at the time of execution of sale-deeds in respect of the land purchased by them between the period 1972 and 1978. In this context, he has referred to the copies of statements recorded on 9-7-1991 by Hakim Singh and his two sons Kripal Singh and Gurbachan Singh. It was vehemently submitted that on the basis of the age stated by

these two persons, the courts below rightly held that they were minors. As against this, the learned counsel for the petitioners submitted that the finding recorded on this score is entirely perverse on the face of record and it is based on guess-work and not based on record. It was urged that so far as the case of Jarnail Singh, who was son of Kripal Singh and grand-son of Hakim Singh is concerned, the land acquired by a minor through sale-deed 2-2-1979 shall be treated to the property held by his parents. The learned counsel further urged that Jarnail Singh had attained majority in the year 1985, when he owned property by way of execution of will in his favour. It has been fairly conceded that as per extract of Family Register filed on behalf of the petitioners, Jarnail Singh was born in the year 1974, who had since died on 15.5.1999. It may be mentioned that Jarnail Singh, who appeared in the witness box on 9-7-1991 stated his age to be 30 years, meaning thereby that he was born in the year 1961. It appears that this witness had stated his age to justify him having attained majority on the date of execution of sale-deed in his favour in the year 1979, which is not acceptable as will be seen later on. It is admitted to the parties that the sale-deeds which are the subject-matter of decision in this writ petition relate to the years 1970, 1972 and 1978 in respect of Kripal Singh and Gurbachan Singh.

In view of the above position and submissions, the only thing to be adjudged in this writ petition is whether the finding arrived at by the Competent Authority as well as Additional Commissioner vide judgment and order dated 31-1-1993 and 26-5-1993 respectively holding both the petitioners, namely, Kripal Singh and Gurbachan Singh as minors at the time of purchase of land by them through sale deeds is erroneous on the face of record or not. It may be mentioned here that this Court while exercising writ jurisdiction is not supposed to sit as a Court of Appeal and within the ambit of its limited scope, the perversity apparent on the face of record has to be examined. The material before this court, apparently on the face of it, goes to show that, in any view of the

matter as held by the Appellate Court in the remand order, referred to above, both Kripal Singh and Gurbachan Singh were major at the time of execution of sale deeds in their favour. The petitioners have filed extract of Family Register in this Writ Petition for the purpose of substitution of legal heirs of deceased petitioners on 5-6-2004. It may be noted that this document was not available before the Additional Commissioner at the time of pendency of appeal, who had earlier remanded the case holding Jarnail Singh to have attained majority along with his father Kripal Singh and Gurbachan Singh at the time when they acquired land through sale deeds. This document (Extract of Family Register) can be taken as proof of age, wherein the birth year of Kripal Singh is shown to be 1942. He attained majority according to this document in the by the close of the year 1960. The sale deeds in question relate to the years 1970, 1972 and 1978. The birth year of Gurbachan Singh, according to the said document, is 1946. Thus he attained majority by the close of the year 1964. As per objection filed by the tenure holder Hakim Singh before the Competent Authority on 13-5-1991, he had mentioned the age of Kripal Singh and Gurbachan Singh about 46 and 44 years respectively and that of Jarnail Singh about 24 years. If this objection is considered, then the birth year of Kripal Singh and Gurbachan Singh comes to be 1945 and 1947 respectively meaning thereby that they attained majority by the close of the year 1963 and 1965. Kripal Singh in his statement on oath recorded on 9-7-1991 stated age to be 47 years, meaning thereby he was born in the year 1944 and thus, he attained majority in the year 1962. According to the deposition of Gurbachan Singh, he was aged 43 years on 9-7-1991 meaning thereby he was born in the year 1948 and attained majority by the close of the year 1966. Thus on the face of record, both Kripal Singh and Gurbachan Singh were clearly major at the time of purchase of land and the execution of sale-deeds in their favour and mentioned earlier, so far as Kripal Singh and Gurbachan Singh, both sons of original tenure holder Hakim Singh are concerned, the finding of fact as recorded by the Appellate Court in its judgment and order dated 13-10-1992 does

not suffer from any perversity or illegality and was binding upon the Competent Authority/Additional District Magistrate (Finance & Revenue) Nainital as observed earlier.

As per definition of family under section 3(7) the Act, ***'family' in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters)*** and as such, the property belonging to the minor Jarnail Singh, son of Kripal Singh shall be treated to be that of his parents for the purpose of Ceiling Act. As per deposition of Jarnail Singh, he purchased 15 Bigha, 15 Biswans land through sale deed dated 2.2.1979 and he acquired land measuring 24 Bigha by way of will executed in his favour on 6-5-85.

In the course of arguments, the learned counsel for the petitioners, Sri Vijay Bhatt made a reference to the judgment of this Court dated 4-4-2006 in Writ Petition (M/S) No. 307 of 2001, State of U.P. Vs. Commissioner Kumaun Region and others and submitted reliance was placed by this Court upon the Division Bench Judgment of the Allahabad High Court in the case of ***"Mohammad Abbas Vs. State of U.P. and others" (1979, A.W.C., Page 23)*** wherein it has been held that ***"If land is held by the major sons of the tenure-holder, it is neither to be included in the holding of the tenure holder nor can it be included in the land sought to be declared surplus." In para no. 4 it has been observed that "Since land held by the major sons of the tenure-holder was not land which would have been declared surplus under the Act, the transfer of that land could not be ignored in determining the ceiling area applicable to the holder although the land was transferred after the 24th day January 1971".*** Accordingly, the writ petition preferred by the State was dismissed. It has been urged that the ratio of the cited Division Bench Judgment of the Allahabad High Court is fully applicable to the facts of the present

case and facts are similar, therefore, the present writ petition deserves to be allowed.

A bare perusal of the record further shows that the competent authority has exercised the jurisdiction not vested in it inasmuch as when the appellate authority, though right or wrong, had held that all the objectors-appellants were major and each of them shall be treated as separate tenure holder, there was no scope for the Competent Authority to have overridden the finding of fact arrived at by the Appellate Court. The findings regarding attaining majority by all of them were based on the basis of age stated by the petitioners before the Competent Authority. Another observation made by the Competent Authority was that at the relevant period, there was ban to purchase the land belonging to Bengalis. It may be noted here that on this score again, the Competent Authority had exceeded its jurisdiction. In that event that State was at liberty to proceed under the provisions of the Act, if the transfers of land were made in contravention of the provisions of the Zamindari Abomination and Land Reforms Act, but as stated above, the findings recorded by the appellate court were fully binding on the Competent Authority. It is thus clear that the Competent Authority has committed a manifest error apparent on the face of record in ignoring the findings of fact recorded by the Appellate Court. The only course open to the Competent Authority was to follow the directions regarding issuance of notices under Section 10(2) of the Act to each of the appellants separately and to proceed against them in accordance with the provisions of the Act regarding declaration of surplus vacant land in their possession, if exceeding the prescribed ceiling limit. The impugned order dated 31-1-1993 passed by the Competent Authority suffers from manifest error of law including jurisdictional error and the same is perverse. According to learned counsel, it does not stand to reason as to why the Competent Authority was inclined to take up the matter regarding age of the objectors/appellants, when the finding of the appellate court had become final on a particular point. It appears

that the Competent Authority lost sight of the impact/bearing of clear-cut findings record by the Appellate Authority, which were fully binding upon the Additional District Magistrate/Competent Authority. On this ground alone, the writ petition is liable to be allowed.

For the reasons and discussion aforesaid as well as the submissions made by the learned counsel and without re-appreciating the evidence on the finding of fact, I am of the considered view that apparently the courts below committed manifest error of law and findings recorded by the authorities below suffer from perversity and illegality and the Competent Authority had exercised the jurisdiction not vested in it and the order under challenge dated 30-1-1993 (Annexure No. 12) and order dated 26-5-1993 and 27-10-1993 (Annexure Nos. 13 and 14 to the writ petition) passed by respondent no. 1 and respondent no.2 respectively are liable to be set aside. It is directed that the land held by the petitioners Kripal Singh and Gurbachan Singh shall not be included in the holdings of original landholder Hakim Singh for the purpose of ceiling proceedings. However, so far as the land measuring 15 Bigha 15 Biswans purchased by Jarnail Singh if he may be presumed as minor on 2-2-1979 and the land acquired under the will in the year 1985 shall be clubbed with the land of his father Kripal Singh, as he was a minor as per entry of Family Register, which shows his birth year to be 1974.

In addition to above, apparently the learned Competent Authority having ignored the finding of fact recorded by the Additional Commissioner in the remand order dated 13-10-1992 exercised a jurisdiction not vested in it and that too without considering the bearing of the findings recorded by an appellate court.

Accordingly, the writ petition is allowed. The impugned judgment and order dated 27-10-1993 and 26-5-1993 (Annexure Nos. 14 & 13 respectively) passed by the Additional Commissioner and the impugned order dated 30-1-1993 passed by the respondent no.1 (Annexure-12) are set aside. The competent authority-respondent no.1 shall be at liberty to proceed in the matter separately so far as holding of tenure holders Kripal Singh and Gurbachan Singh, both sons of Hakim Singh is concerned, if after acquiring the land in succession. It is further clarified that if after the death of the original tenure holder Hakim Singh and his son Kripal Singh and grand-son Jarnail Singh, whosoever acquired the land in succession is found in possession of holding in excess of ceiling limit, the State may proceed against such tenure holder in accordance with law and as per provisions of the Act.

The State would also be at liberty to proceed under Section 167 of the Z.A. and L.R. Act, if it is found that the transfers by way of sale-deed were in contravention of the provisions of the said Act.

In the peculiar circumstances of the case, no order as to costs.

RCP **(B.S. Verma, J.)**